

State and Local Child Welfare Law, Policy, Procedures, and Manuals Related to Children and Family Immigration Status

Compiled by ABA Center on Children and the Law (March 2007)

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Florida

Florida Statute 39.5075 and .013 (2005)

Recognizes SIJS process in “dependency” cases (and keeping court jurisdiction post-18 for completing it); need for child welfare agency to report to court on child’s immigration status and steps to address it; services “must be provided” without regard to immigration status unless otherwise statutorily prohibited; agency case plan must recommend whether permanency plan will include child remaining in U.S.

Florida law says that if case plan says child should remain in U.S., then agency must evaluate whether child is eligible for SIJS and if so it “shall petition the court” (within 60 days) for the findings and order required, with the child’s views heard.

See also, Florida child welfare policy: 65C-9.001-003.

Illinois

Chapter 705, Section 405/2-4a (2003)

Recognizes SIJS procedures and describes findings needed for child’s eligibility for “long term foster care” as well as defining “abandonment” for purposes of SIJS.

New York City

Implementation of Local Law 73 on access to services to non-English speaking persons by NYC Administration for Children’s Services.

“Immigration and Language Guidelines for Child Welfare Staff” addresses immigration status issues in CPS investigations and foster care placements, working with immigrant clients, & language issues.

“Language Identification Card” is intended to help determine family’s primary language and provide language-specific services (ACS clients speak 35-plus languages).

Texas

Department of Family & Protective Services CPS Policy 658

Addresses notifying foreign consulate requirement (under Art. 37(b) of Vienna Convention on Consular Relations) when child taken into care, getting home studies in foreign countries, the repatriation/stay in U.S. decision, repatriation requirements, verifying immigration status of foster kids, the agency citizenship/immigration status verification process, SIJS process, agency transportation of undocumented children/parents, and forms & checklists.

Connecticut

Department of Children and Families Policy 31-8-13 (12/05)

Clearly states that agency services are available regardless of immigration status, including “family preservation efforts to avoid family members being separated through incarceration due to violation of immigration status of deportation procedures” and that CPS shall serve children who don’t have documentation papers. Identification of undocumented persons “shall not result in” reporting to DHS. This policy says that workers should aid children in their care to get Green Cards.

Utah

Division of Child and Family Services Out-of-Home Care Practice Guidelines 303.10 (rev. 6/06)

Child welfare agency policy says that children in foster care will be supported regardless of citizenship status.

California

Bill vetoed in 2004 by Governor: AB1895

This would have required appointment of immigration attorney for every dependent child or ward of the court who was not a lawful permanent resident or U.S. citizen. Attorney would have to help child secure SIJS status.

Indiana

Child Welfare Agency Regulations -- Section 2 - Child Protection Services

205.212 Investigations Involving Illegal Aliens

....Immigration and Naturalization (INS) is to be contacted if the parties involved in the situation under investigation are illegal aliens. For immigration-related matters for the State of Indiana except Lake, Porter, LaPorte, and St. Joseph counties, contact the Indianapolis INS Enforcement Office, Investigations Unit, at (317) 226-6202. For Lake, LaPorte, Porter, and Saint Joseph counties only, contact the Chicago District Office, Enforcement Office, Investigations Unit, at (312) 385-1820 or (312)-385-1776. By contacting the INS, DFC fulfills any obligation to report illegal aliens. Making this report does not necessarily result in INS taking any action, however.

Found at: www.in.gov/dcs/pdf/policies/cwmanual2a.pdf.

Section 3 – Children In Need Of Services: Procedures For Services Delivery To Chins

303.12 -- Taking Children Who Are Illegal Aliens or Foreign Nationals into Custody

When a child who is an illegal alien/foreign national is removed due to immediate safety concerns, the county office of family and children (COFC) cannot delay or deny placement of the child in an available foster home based on the race, color or national origin of the child or foster parent (42 USC 1996b; 42 USC

671(a)(18) (Title IV-E). In addition, it is the responsibility of the COFC to provide adequate translators for the family and child in the removal, CHINS and service proceedings.

In addition, the COFC must contact the appropriate foreign consulate. In compliance with the provisions of the Vienna Convention for all detained foreign nationals, it is the responsibility of the COFC to contact the appropriate foreign consulate or embassy in the United States as soon as possible after the detention of a child. All foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status in the United States. Thus "illegal" aliens have the same rights to consular assistance, as do "legal" aliens.

Example: If a child whose parents are aliens/foreign nationals from Mexico, appropriate COFC staff would need to contact:

Indiana's Mexican Consulate, 39 West Jackson Place, Suite 103, Indianapolis, Indiana 46225

Phone: (317) 951-0005 and 951-4126, Fax: (317) 951-0006 and 951-4176

E-mail: conindianapolis@ser.gob.mx The Indianapolis office serves Indiana, Ohio and Kentucky.

Kansas

Children and Family Services Policy and Procedure Manual

§ 5262 -- Special Considerations for Undocumented Youth

Children and youth may petition for lawful permanent resident status in the United States through Special Immigrant Juvenile Status (SIJS). If granted special immigrant juvenile status and their petition for adjustment of status is approved, then the child/youth becomes a legal resident alien of the United States with the ability to live and work within the U.S. without fear of deportation. After five years, legal resident aliens may apply for citizenship, if they choose. The link to the complete SIJS manual can be found at <http://www.ilrc.org/sijs.php>. A child or youth loses the option of applying for SIJS once the juvenile courts no longer have jurisdiction or the youth turns 21 years of age, whichever comes first. SIJS does not alter the youth's status as a child in need of care. All requirements of the state and federal law as well as agency policy continue to apply throughout the process seeking SIJS and until the Secretary is relieved of custody.

A. Eligibility Standards for SIJS

Unmarried children who are under age 21 and meet the following three standards may apply for SIJS:

1. A youth must be under the jurisdiction of a court in a child in need of care or juvenile offender proceeding.
2. The court must find that reintegration is not a viable option even when termination of parental rights is not in the child's best interest. SIJS does not require termination, but all efforts to reintegrate shall have been abandoned. The case plan goal cannot be reintegration and an alternative permanency option must be selected or under consideration. Youth in care on track for anything other than reunification should be given the option to apply for SIJS. In addition, being adopted does not automatically naturalize a youth who is undocumented. If adopted while still without papers, the adoptive parents must naturalize the youth.
3. The court must further find that it is not in the youth's best interest to return to his or her home country. This determination can be based on information gathered using a variety of methods: interviewing the youth to find out whether there is any known and appropriate place to go if returned to the home country or country of last residence; reports from third parties about the unsuitability of relatives' homes available to the child in the home country, etc. However, the court must be clear

that the proceeding did not arise to secure SIJS but because the child was abused, neglected, or abandoned.

B. Risks and Benefits

If application is submitted for SIJS, there is risk of denial of their petition and a decision to send them back to their country of origin. However, if a youth is already in deportation proceedings for his or her removal, there is nothing to lose by filing an application for SIJS. There is also risk for youth who do not apply. Youth can apply for SIJS up until they turn 21 years of age. If the juvenile court and foster care case is closed, youth have no option to apply for SIJS. If a youth is emancipated without legal documentation, he or she may not have another chance to apply for legal status in the United States.

C. How to Apply for SIJS

1. Evaluate the minor's case to make sure that it fits within each of the three eligibility criteria.
2. Discuss the option fully with the youth, explaining in plain language what SIJS is, what it could do for the youth and the risk involved. It is important to emphasize the risk of deportation and the impact SIJS has on the youth's rights toward birth parents and siblings.
3. If the youth decides to proceed with application for SIJS but has a mitigating factor on his or her record (i.e. arrests, convictions, drug abuse, testing positive for HIV), then contact an experienced immigration attorney. These cases are not impossible to win, but they are more difficult and require a more intricate knowledge of the process.
4. If proceeding with the application for SIJS, have a fact-finding hearing on the three criteria in court.
5. At the end of the hearing, the judge should write up the court's findings in an "Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status" that includes factual findings. Although not conclusive, this order must be included in the child's application for SIJS. An example of the proposed order on the three criteria using specific language can be found at <http://www.ilrc.org/sijs.php> of the SIJS manual in Appendix E.
6. Fill out and turn in both an SIJS and a change in legal status form to the closest Citizen Immigration Services or CIS (formerly INS) office.
7. The applicant minor should be granted employment authorization while the case is pending and should schedule an appointment for the youth to be fingerprinted for an FBI criminal activity check.
8. Next, the CIS will schedule an interview, where a number of people (social worker, lawyer, etc) can also attend. The CIS might make a decision on the application at the interview, or may ask for further information or time.
9. This process can take as long as 3 years. Make sure you begin early, so that the juvenile court can maintain Jurisdiction throughout the process.

Important points to remember in the application process are included in appendix 5-J.

Massachusetts

This state also has child welfare agency policy procedures for unaccompanied alien minors, found at: 110 CMR 1.12 (2007)

Michigan

The state explicitly does not exclude undocumented children from CPS eligibility (CFF 711-3 (2002)).